

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CONSTRUCTIVE EATING, INC.,

Plaintiff,

v.

Civil Action No. 2:19-cv-10619

MASONTOPS, INC.,

Honorable Sean F. Cox

Defendant.

**OPINION AND ORDER DENYING DEFENDANT'S MOTION TO DISMISS ALL
CLAIMS OF PLAINTIFF'S FIRST AMENDED COMPLAINT (ECF NOS. 23, 26, 27)**

This is an intellectual property case in which Plaintiff Constructive Eating, Inc. ("Constructive Eating") alleges that Defendant Masontops, Inc. ("Masontops") violates its intellectual property rights on its designs for construction vehicle-themed eating utensils.

This case is before the Court on Masontops' motion under Rule 12(b)(6) to dismiss all of Constructive Eating's claims (the "Motion"). The parties have submitted written briefs explaining their positions on whether the Court should dismiss Constructive Eating's claims. ECF Nos. 23 (Def.'s Mot. Br.), 26 (Pls.' Resp. Br.), 27 (Def.'s Reply Br.). Pursuant to E.D. Mich. LR 7.1(f)(2), the Court will decide the Motion without a hearing. Accordingly, the hearing scheduled for February 11, 2021 is canceled. *See* ECF No. 31. For the reasons set forth below, the Court will deny the Motion.

I. PROCEDURAL HISTORY

Constructive Eating filed this case on March 1, 2019. Compl., ECF No. 1. Constructive Eating later filed an amended complaint on April 12, 2019 (the "Complaint"). Am. Compl., ECF No. 4. In the Complaint, Constructive Eating alleges that Masontops violates its intellectual property rights on its designs for construction vehicle-themed eating utensils under both federal

Having found that Masontops has not offered any persuasive reason why the Court should dismiss the state law claims, the Court denies the Motion as to Constructive Eating's claims of common law unfair competition and violation of the MCPA.

V. CONCLUSION

For the reasons set forth above, having found that Constructive Eating has satisfied the relevant pleading requirements and plausibly alleged the elements of its claims, the Court denies the Motion.

s/Sean F. Cox

SEAN F. COX
UNITED STATES DISTRICT JUDGE

Dated: February 23, 2021